



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

MAY 29 2013

OFFICE OF  
COMPLIANCE AND ENFORCEMENT

**FOR SETTLEMENT PURPOSES ONLY / PRIVILEGED AND CONFIDENTIAL**  
**COMMUNICATION – SENT BY CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Nabin Joshi  
Member and Registered Agent  
Short Stop LLC  
1307 N. Dolanway Road  
Ellensburg, Washington 98926

Re: Notice of Intent to File Administrative Complaint and Compliance Order for Violation of  
Federally-Approved Underground Storage Tank Regulations

Dear Mr. Joshi:

The U.S. Environmental Protection Agency (EPA) has documented violations of Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991 *et seq.*, for violations of the underground storage tank (UST) regulations at Flying B #29 in Ellensburg, Washington. RCRA allows the EPA to commence a judicial or administrative action to assess civil penalties up to \$16,000 per tank per day for each violation. The purpose of this letter is to inform you that the EPA is prepared to initiate an action for civil penalties for this violation. By this letter, we wish to provide you with the opportunity to discuss this matter with the EPA prior to the filing of a complaint and compliance order.

In 1993, the EPA granted approval to the State of Washington to administer a state UST program in lieu of the federal UST program pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. Therefore, the requirements and standards of the Washington UST program are requirements of Subtitle I of RCRA and are independently enforceable by the EPA pursuant to its authority under Section 9006 of RCRA, 42 U.S.C. § 6991e.

In general, the EPA favors pre-filing discussions as they help ensure that we have all relevant information, and can lead to resolution of enforcement matters without resorting to the time and expense of litigation. If we are able to reach a settlement, the EPA would not file a complaint and compliance order; instead, we would resolve the case with an administrative consent agreement and final order. Such settlement must include, at a minimum, your agreement to certify current compliance with the UST regulations, to implement procedures to ensure future compliance, and to pay an appropriate penalty. Once a consent agreement and final order is signed by all parties, the EPA generally issues a press release announcing the settlement.

It is the EPA's view that a total penalty of \$36,402 is an appropriate settlement amount to resolve the alleged violations. The enclosed document entitled "Description of Alleged Violations and Summary of Proposed Penalty" (Enclosure 1) explains how the EPA calculated the proposed penalty. This amount was determined in accordance with Office of Solid Waste and Emergency Response Directive 9610.12,

"U.S. EPA Penalty Guidance for Violations of the UST Regulations" (UST Penalty Guidance), dated November 14, 1990, as amended for inflation on April 6, 2010. A copy of the UST Penalty Guidance is enclosed (Enclosure 2).

Also enclosed is the EPA's Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet (Enclosure 3), which provides information on compliance assistance that may be helpful to you.

If we do not reach a settlement within 90 days of initiating negotiations, the EPA will either file an administrative complaint and compliance order and the case will be assigned to an administrative law judge, or the EPA will refer the matter to the Department of Justice for filing in federal district court. If we do not reach agreement in this matter within the time period allotted for settlement discussions, the EPA reserves the right to seek the maximum allowable penalty at law in litigation of this case.

If you wish to engage in pre-filing negotiations in this matter or if you have any questions about this letter, please contact Deborah Hilsman, in the Office of Regional Counsel, at (206) 553-1810 within 20 days of receipt of this letter to schedule a meeting. The EPA is willing to meet with you at our Seattle office or via teleconference. Thank you for your prompt attention to this important matter.

Sincerely,

*Cheryl Williams*

Cheryl Williams, Manager  
Ground Water Unit

#### Enclosures

1. Description of Alleged Violations and Summary of Proposed Penalty
2. U.S. EPA Penalty Guidance for Violations of the UST Regulations
3. EPA's Small Business Regulatory Enforcement and Fairness Act Information Sheet

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To Nabin Joshi	
Short Stop LLC	
1307 Dolarway Road	
Ellensburg, Washington 98926	

PS Form 3800, August 2006 See Reverse for Instructions



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**DESCRIPTION OF ALLEGED VIOLATIONS AND SUMMARY OF PROPOSED  
PENALTIES**

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**Short Stop LLC  
Flying B #29  
1307 N Dolarway Road  
Ellensburg, Washington**

**Description of Alleged Violations**

Pursuant to Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991c, the U.S. Environmental Protection Agency (EPA) granted approval to the Washington Department of Ecology (Ecology) to administer a state underground storage tank (UST) program in lieu of the federal UST program. The Washington state UST regulations are found in Chapter 173-360 of the Washington Administrative Code (WAC). The WAC requires owners and operators of an UST system to conduct monthly release detection for their tanks. The WAC requires owners to upgrade the piping associated with each UST system so that all metal piping that routinely contains regulated substances and is in contact with the ground must have cathodic protection (CP).

On April 18, 2012, a representative from the EPA conducted an inspection of Flying B #29, in Ellensburg, owned by Short Stop LLC (Respondent). The facility has five USTs (Tank #s 1-5). Tanks #4 and #5 are compartmentalized and are treated as one UST system for purpose of penalty calculation. The facility representative stated Tank #5 is not in use; however, it has one inch of product remaining in the tank. The lines associated with the tanks are fiberglass-reinforced plastic (FRP). At the dispenser associated with Tank #1, the metal flex connector which connects the FRP line to the dispenser is in contact with the ground and does not have CP. The FRP line associated with Tank #4 has a metal flex connector in contact with the ground in the turbine sump and it is wrapped in plastic. The plastic wrap does not provide CP.

Based on information gathered during the inspection and provided by Respondent and Ecology after the inspection, the EPA identified the following violation of the WAC regulations governing USTs, described below.

**Violation – Failure to Conduct Release Detection for USTs**

Respondent failed to conduct monthly release detection in violation of WAC 173-360-335(2)(a) for Tank #1 from at least April 2011 through November 2011, in January 2012, and in March 2012; for Tanks #2 and #3 from at least April 2011 through November 2011; and for Tank #4 from at least April 2011 through November 2011, and in March 2012.

**Violation – Failure to Equip Piping with CP**

Respondent failed to equip the metal flex connectors in contact with the ground at the dispenser associated with Tank #1 and in the turbine sump associated with Tank #4 with CP in violation of WAC 173-360-310(3) from at least November 25, 2009 through the present.

### Summary of Proposed Penalties

The EPA uses the "U.S. EPA Penalty Guidance for Violations of the UST Regulations" (UST Penalty Guidance) to ensure that enforcement actions for violations of UST requirements are applied in a fair, uniform, and consistent manner. Specific circumstances may warrant departure from the UST Penalty Guidance.

Under the UST Penalty Guidance, the EPA first calculates a "gravity-based penalty," which is arrived at by using a matrix value which considers potential for harm and deviation from the requirements. The matrix value is then further modified by "violation-specific adjustments," an "environmental sensitivity multiplier," and a "days of noncompliance multiplier." Then the EPA determines whether an owner or operator has obtained any economic benefit from noncompliance and adds that number to the gravity-based penalty.

The total proposed penalty (gravity-based penalty plus economic benefit) for all the violations is \$36,402, as summarized in the table below. For purpose of calculating the gravity-based penalty the EPA has assumed the environmental sensitivity of the area where the facility is located to be low and has therefore used an environmental sensitivity multiplier (ESM) factor of 1.0 for each violation. For purpose of calculating the economic benefit for the tank release detection violation, the EPA used the cost of conducting statistical inventory reconciliation (SIR) as the release detection method for the tanks and the cost of installing sacrificial anodes on two lines. During settlement negotiations, the EPA will consider whether any adjustments to the proposed penalty are appropriate.



<b>Violation / Regulatory Citation</b>	<b>Description of Violation</b>	<b>Potential for Harm / Extent of Deviation</b>	<b>Days of Noncompliance Multiplier</b>	<b>Adjustments and/or Economic Benefit according to UST Penalty Guidance</b>	<b>Penalty Amount</b>
Failure to conduct release detection for tanks	Failure to conduct monthly release detection for four USTs (WAC 173-360-335(2)(a))	Major/ Major	Tank #1: 04/2011 - 11/2011; 01/2012; & 03/2012 = 2.5  Tank #2 & 3: 04/2011-11/2011 = 2.0  Tank #4: 04/2011-11/2011 & 03/2012 = 2.5	Includes a violator-specific, upward adjustment of 20% for history of noncompliance and negligence of the owner/operator.  Includes an assessment of \$374 for the economic benefit obtained by failure to conduct SIR for the four UST systems from April 2011 through March 2012.	\$23,378
Failure to equip piping with corrosion protection	Failure to equip two metal flex connectors that are in contact with the ground with corrosion protection. (WAC 173-360-310 (3))	Major/ Major	11/25/2009 - 04/30/2013 = 5.0	Includes a violator-specific, upward adjustment of 20% for history of noncompliance and negligence of the owner/operator.  Includes an assessment of \$244 for the economic benefit obtained by failure to equip two metal flex connectors with corrosion protection.	\$13,024